

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Marvin A. Saunders,
9

10 Plaintiff,

11 vs.

12 Michael J. Astrue, Commissioner of Social
13 Security,

14 Defendant.

No. CV-08-595-PHX-DGC

ORDER

15
16 In a memorandum decision dated May 12, 2011, the Court of Appeals for the
17 Ninth Circuit reversed the judgment affirming Defendant's denial of social security
18 benefits to Plaintiff. Doc. 31-1. The Court of Appeals held that the ALJ improperly
19 discredited Plaintiff's pain and symptom testimony and erred in determining his RFC, in
20 part by erroneously rejecting the opinions of treating physicians in favor of a non-treating
21 source. *Id.* at 2-9. The case has been remanded for further proceedings. *Id.* at 2, 5.

22 Plaintiff has filed a motion for attorneys' fees pursuant to the Equal Access to
23 Justice Act ("EAJA"), 28 U.S.C. § 2412. Doc. 26. The motion is fully briefed. Docs.
24 28, 32. Oral argument has not been requested. For reasons stated below, the motion will
25 be denied.

26 The EAJA "authorizes federal courts to award attorneys' fees, court costs, and
27 other expenses when a party prevails against the United States, although fee-shifting is
28 not mandatory." *Hardisty v. Astrue*, 592 F.3d 1072, 1076 (9th Cir. 2010). Plaintiff is a

1 prevailing party because this matter has been remanded for further proceedings. *See*
2 *Gutierrez v. Barnhart*, 274 F.3d 1255, 1257 (9th Cir. 2001). The Court should award
3 reasonable attorneys' fees under the EAJA unless Defendant shows that his position in
4 this case was "substantially justified or that special circumstances make an award unjust."
5 28 U.S.C. § 2412(d)(1)(A).

6 To meet the "substantially justified" standard, Defendant's position need not be
7 "justified to a high degree." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Rather, it
8 need only be "'justified in substance or in the main' – that is, justified to a degree that
9 could satisfy a reasonable person." *Id.* For reasons stated by Judge Murguia in affirming
10 the ALJ's decision (Doc. 20), and by Judge Bea in his dissent (Doc. 31-1 at 6-9), the
11 Court finds Defendant's position in this case, as a whole, to be substantially justified.
12 Stated differently, although not correct, the position is such that "a reasonable person
13 could think it correct[.]" *Pierce*, 478 U.S. at 566 n.2; *see Le v. Astrue*, 529 F.3d 1200,
14 1201 (9th Cir. 2008).

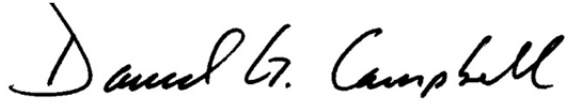
15 The Court recognizes that Defendant's "string of successes" in this case is not
16 dispositive of the substantial justification inquiry. *Pierce*, 478 U.S. at 569. But the
17 opinions of Judges Murguia and Bea clearly constitute objective indicia of substantial
18 justification. *See id.*; *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1231 (9th
19 Cir. 1990); *Lewis v. Barnhart*, 281 F.3d 1081, 1084 (9th Cir. 2002); *Gonzales v. Free*
20 *Speech Coalition*, 408 F.3d 613, 620 (9th Cir. 2005). More importantly, the actual merits
21 of Defendant's position presented a "genuine dispute" as to whether Plaintiff was
22 disabled within the meaning of the Social Security Act. *Pierce*, 478 U.S. at 565.

23 Plaintiff notes that the ALJ's decision was not supported by substantial evidence
24 (Doc. 32 at 2), but this does not mandate a fee award under the EAJA. In short, the Court
25 finds Defendant's "position as a whole substantially justified, albeit not ultimately
26 adequate to sustain the agency's decision." *Al-Harbi v. I.N.S.*, 284 F.3d 1080, 1085 (9th
27 Cir. 2002). The Court will exercise its discretion and deny the motion for attorneys' fees.
28

1 *See Pierce*, 478 U.S. at 557-63.

2 **IT IS ORDERED** that Plaintiff's motion for attorneys' fees (Doc. 26) is **denied**.

3 Dated this 22nd day of July, 2011.

4
5
6 

7 _____
8 David G. Campbell
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28